

Proposed Trailer Bill Legislation

Reclassification of Fully Protected Species

FACT SHEET

Summary:

To ensure better species conservation and improved permitting for essential infrastructure projects, the proposed trailer bill language would repeal the four existing statutes designating species as “fully protected” under California law. The bill would reclassify the 37 fully protected species so that 15 will be listed as threatened under the California Endangered Species Act (CESA), 19 will be listed as endangered under CESA, and three will have no listing status and would retain the protections afforded to species generally under the Fish and Game Code.

Background:

The Fish and Game Code designates 37 birds, mammals, reptiles, amphibians, and fish as “fully protected.” (See Fish and Game Code sections 3511, 4700, 5050, and 5515.) Fully protected species cannot currently be taken under any circumstances except for scientific research and recovery purposes, and pursuant to an approved Natural Community Conservation Plan.

Of the 37 currently fully protected species, 7 are not currently protected by CESA, 8 are also listed as threatened under CESA, 19 are also listed as endangered under CESA, and 3 were previously listed under CESA but were removed from the lists by the Fish and Game Commission (Commission) because they were deemed to be recovered or extirpated.

Justification:

The fully protected species statutes were added to the Fish and Game Code in 1970, which predates the California Legislature enacting the current CESA statutes in 1984. Reconciling these statutes in 2023 ensures better species conservation and improved permitting for essential infrastructure projects. The fully protected species statutes create an untenable situation that creates significant and unnecessary risks for project proponents, while resulting in no mitigation or conservation to aid those species in their recovery.

Because the Department's ability to authorize incidental take of fully protected species is extremely limited, project proponents operating within the range of one or more fully protected species must either avoid the species completely—which is often difficult or impossible—or risk civil and criminal liability if they proceed with the project and take of the species occurs.

However, because the Department is generally prohibited from permitting take of these species, it is also precluded from obtaining mitigation for the impacts of any take of

these species resulting from projects that elect to proceed and risk engaging in unlawful take. This is true even though of the 37 fully protected species, 27 are currently listed as threatened or endangered under CESA. In addition, 3 of these species were previously listed under CESA but were delisted by the Fish and Game Commission. As a result, project proponents are compelled to take unreasonable risks, but the species to be protected see little, if any, benefit.

This proposed bill would repeal the four fully protected species statutes and reclassify all 37 fully protected species to an appropriate listing status under CESA. The 7 species not currently listed under CESA would become threatened species, the 8 species currently listed as threatened under CESA would retain that status, the 19 species currently listed as endangered under CESA would retain that status, and the 3 that were previously delisted would not be subject to CESA and would retain only the protections afforded to species generally under the Fish and Game Code.

This proposal would facilitate responsible development and provide increased benefits to these species. Reclassifying fully protected species would allow project proponents to apply for and obtain various take authorizations, including but not limited to, incidental take permits pursuant to Section 2081(b), consistency determinations pursuant to Section 2080.1, Voluntary Local Programs pursuant to Section 2086, and Safe Harbor Agreements pursuant to Section 2089.2, et seq. These authorizations would not only facilitate responsible and appropriate development, but would also allow the Department to require mitigation and other actions to contribute to the conservation of these species.

Proposed Language:

The proposed trailer bill language to reclassify fully protected species includes these elements:

- Repeals the four existing fully protected species statutes: Fish and Game Code sections 3511, 4700, 5050, and 5515.
- Reclassifies the 37 currently fully protected species as follows:
 - Adds 7 species not previously listed pursuant to CESA to the list of threatened species under CESA.
 - For the 8 species currently listed as both threatened and fully protected, retains the threatened status under CESA.
 - For the 19 species currently listed as both endangered and fully protected, the bill retains the endangered status under CESA.
 - For the 3 species that are currently fully protected and were previously listed pursuant to CESA but removed from those lists by the Commission, the bill provides for the protections afforded to species generally under the Fish and Game Code.
- Confirms that the Commission has authority to change the CESA status (e.g., uplist, downlist, or delist) any of the 34 formerly fully protected species that will be

CESA listed. The bill also exempts any future proceeding to change the CESA status of any of these 34 species from compliance with the California Environmental Quality Act.

- Confirms that prior project-specific statutes authorizing take of fully protected species remain valid and in effect.